

Charles
Orzechoskie/R5/USEPA/US
08/22/2008 02:20 PM

To Rich Lemley/DC/USEPA/US, Carolyn Davis/DC/USEPA/US
cc Brd238, Council 238
bcc

Carolyn

Subject Overtime - GOP

President:
Charles Orzechoskie

Two Vice Presidents:
Karen R. Ray

1st Vice President:
Kathryn Gou

1st Vice President:
Henry Carroll

Secretary:
Thomas E. Lieb

Treasurer:
John J. O'Leary/Chad

Emergency at Arms:
Paul Koppinger



National Council of EPA Locals Council #238
American Federation of Government Employees (AFL-CIO)
Charles Orzechoskie, President
P.O. Box 1127
Chicago, IL 60690-1127

Telephone: 312.886.2776; Facsimile: 312.886.7578

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3rd Vice President
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August 22, 2008

Rich Lemley, Director Office of Human Resources
Carolyn Davis, Director Labor and Employee Relations Staff
EPA Office of Administration and Resources Management
Ariel Rios Building (Mail Code 3600A)
1200 Pennsylvania Avenue, N. W.
Washington, DC 20460

Re: Fair Labor Standards Act (FLSA) Overtime Grievance of the Parties

Dear Mr. Lemley:

This Grievance of the Parties (GOP) is filed on behalf of **all** bargaining unit employees at the Agency represented by AFGE Council 238 (the "Union"), including past employees who were in the bargaining unit at any time during the three (3) year period prior to the filing of the Grievance. The Union waives the time frames associated with the Grievance, until a mutually agreeable time subsequent to the gathering and providing of the information requested in the Union's August 21, 2008, Information Request pursuant to 5 U.S.C. §7114 and Article 5, Section 5 of the Master Collective Bargaining Agreement (MCBA), and after a Grievance meeting in this matter. This extension of time on the Agency's Grievance Response may be revoked at any time in writing by the Union, with reasonable advance notice to the Agency.

The Union alleges that the Agency violated the Fair Labor Standards Act, Title V, OPM and DOL Regulations, the MCBA and all other relevant and applicable law, rule and regulation when it:

1. Failed to properly classify bargaining unit employees as FLSA non-exempt;
2. Failed to pay proper compensation for overtime worked to bargaining unit employees (exempt, nonexempt and wrongfully exempt);
3. Improperly failed to allow bargaining unit employees a choice of compensatory time or overtime (exempt, nonexempt and wrongfully exempt); and
4. Failed to pay suffer or permit overtime to employees (nonexempt and wrongfully exempt).

As relief, the Union requests the following:

1. Reclassify all improperly classified bargaining unit employees, retirees and past employees as FLSA non-exempt, retroactive three (3) years from the date of filing of this Grievance, or three (3) years prior to the date when the Agency knew or should have known that these employees were improperly classified, whichever is earlier.
2. FLSA OVERTIME. Backpay under the collective bargaining agreement, Back Pay Act and FLSA for the difference in pay for any overtime paid for overtime worked by wrongfully classified bargaining unit

employees under Title 5 or other pay schedule, and the true time and one-half to which the employee(s) were entitled. The Agency will pay each employee switched from Exempt to Nonexempt BackPay for a period from three years prior to the filing of the instant Grievance until the date of prospective reclassification, equal to the difference in pay between what the employee received in "capped" overtime pay and true time and one-half for all overtime worked during the relevant time period;

3. Payment for suffer or permit overtime retroactive at least three years.

4. Liquidated damages in an amount equal to the unpaid or underpaid overtime, or interest, if greater than liquidated damages.

5. **COMPENSATORY TIME** - used. The Agency will pay each employee switched from Exempt to Nonexempt BackPay for a period from three years prior to the filing of the instant Grievance until the date of prospective reclassification, equal to the employees regular hourly rate of pay (at the time the Comp Time was earned) times the number of compensatory time hours earned and used;

6. **COMPENSATORY TIME** – unused. The Agency will pay each employee switched from Exempt to Nonexempt BackPay for a period from three years prior to the filing of the instant Grievance until the date of prospective reclassification, equal to 1 the employees regular hourly rate of pay (at the time the Comp Time was earned) times the number of compensatory time hours earned and not used, which "fell off the books" or was otherwise deleted or lost from the Employee's Comp Time balance with the Agency;

7. **COMPENSATORY TIME** – Nonexempt Employees – The Agency will pay each already nonexempt employee BackPay for a period from three years prior to the filing of the instant Grievance until the date of prospective reclassification, equal to the employees regular hourly rate of pay (at the time the Comp Time was earned) times the number of compensatory time hours earned and used, for Comp Time the employee earned and was not given a choice of overtime pay versus Comp Time;

8. **COMPENSATORY TIME** – Properly Exempt Employees - The Agency will pay each properly exempt employee at or below the pay rate of a GS-10 Step 10, BackPay for a period from six years prior to the filing of the instant Grievance until the date of prospective reclassification, equal to the employees regular hourly rate of pay (at the time the Comp Time was earned) times the number of compensatory time hours earned and used, for Comp Time the employee earned and was not given a choice of overtime pay versus Comp Time;

9. Standby pay or on-call pay, as appropriate;

10. Liquidated damages in an amount equal to the unpaid or underpaid comp time damages;

11. Interest, if greater or equal to liquidated damages;

12. Title V Overtime - – Properly Exempt Employees - The Agency will pay each properly exempt employee BackPay for a period from six years prior to the filing of the instant Grievance until the date of prospective reclassification, equal to the employees overtime rate of pay as reflected at www.opm.gov, for time the employee worked that was "ordered and approved" but for which the employee was not paid or

otherwise compensated; and

13. Reasonable attorney fees, costs and expenses.

By way of explanation, the Union is seeking to reclassify all FLSA Exempt employees/positions as FLSA Nonexempt, and seeks damages on behalf of:

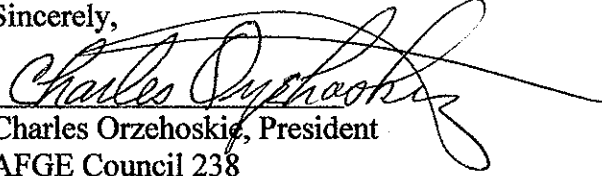
- 1) Employees wrongfully classified as FLSA exempt;
- 2) Employees always classified as FLSA nonexempt;
- 3) Employees properly classified as FLSA Exempt, who are paid at or below the pay rate of a GS-10, Step 10; and
- 4) Employees properly classified as FLSA Exempt.

There are at least five types of damages that the Union seeks on behalf of all or some of the above groups of people:

- 1) Capped overtime damages (for group #1);
- 2) Ordered and approved overtime damages (for group #4)
- 3) Comp time damages (for groups #1, 2, 3);
- 4) Suffer or permit damages (for groups #1 and 2);
- 5) Standby pay or on-call pay (for groups #1, 2, 3, 4);
- 6) Liquidated damages (for groups #1, 2, 3);
- 7) Interest, if larger than liquidated damages or if liquidated damages are not awarded or available (for groups #1, 2, 3, 4); and
- 8) Attorney fees (for groups #1, 2, 3, 4);

Further information can be provided in the Grievance meeting, upon request.

Sincerely,



Charles Orzechoski, President
AFGE Council 238